IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/12/2002

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL APPEAL NO.1671 of 2002

S.Raghavaperumal @ Ramadoss .. Appellant

-Vs-

1. G.Nataraj
2. N.Kannammal
3. P.Mounagurusamy
(Respondents 1 to 3 are Directors
of Sri Sathyam Cotton and Synthetic
Mills (P) Ltd., Madathur, N.G.Pudur
Udumalpet, Coimbatore District).
4. Sri Sathyam Cotton and Synthetic
Mills (P) Ltd.,
4-B, Sowsh Colony, Udumalaipet. .. Respondents

Criminal Appeal is directed against the judgment dated 3.9.2002 rendered in C.C.No.85 of 1995 by the Court of District Munsif cum Judicial Magistrate, Vilathikulam, as stated therein.

!For Appellant : Mr.O.Venkatachalam.

^For Respondent: No appearance.

:JUDGMENT
The above Criminal Appeal is directed against the judgment dated 3.9 .2002 rendered in C.C.No.85 of 1995 by the Court of District Munsif cum Judicial Magistrate, Vilathikulam,thereby dismissing the complaint filed by the appellant against the respondents for an offence punishable under Section 138 r/w 142 of Negotiable Instruments Act, and Section 420 of the I.P.C. and acquitting the respondents under Section 256 of Cr.P.C. on account of the appellant having not taken proper steps in the private complaint initiated by him.

2. Heard the learned counsel for the appellant and perused the records. Proof affidavit has been filed by the learned counsel for the petitioner for having served notice on all the respondents and hence service is held sufficient. Respondents are called absent and there is no

representation on their behalf. Hence this Court is left with no choice but to decide the above appeal on merits having regard to the materials placed on record and upon hearing the learned counsel for the appellant.

3. The trial Court has simply dismissed the complaint filed by the appellant and acquitted the respondents under Section 256 of the Cr. P.C. on ground that on the part of the appellant/complainant, he has not come forward to prosecute the complaint filed by him on 20.4.1995 against the respondents seeking justice for an offence punishable under Section 138 r/w 142 of the Negotiable Instruments Act, and Section 420 of the I.P.C. said to have been committed on the part of the respondents, on a dishonoured cheque for a sum of Rs.1,00,000/-, which was returned unpaid since the respondents did not have sufficient funds in their account.

4. The lower Court has simply passed an order stating that, since for a long time the complainant did not come forward to prosecute the complaint, he has no interest in prosecuting the case against the respondents and hence dismissed the said complaint thereby acquitting the respondents in spite of the Non Bailable Warrant issued already are pending against them, without assigning any valid or tangible reason and hence, the appellant has come forward to prefer the above Criminal Appeal on certain grounds as pleaded in the grounds of appeal.

5. The only point for consideration in the above circumstances is, "whether the lower Court has complied with the legal requirements as warranted by the Section and the proposition of law as propounded by the Honourable Apex Court in its judgment rendered in ASSOCIATED CEMENT CO.LIMITED Vs. KESHVANAND (AIR 1998 SUPREME COURT 596)", wherein, in paragraph 18, it has held:

".....
18. Reading the Section in its entirety would reveal that two constraints are imposed on the Court for exercising the power under the Section. First is, if the Court thinks that in a situation it is proper to adjourn the hearing then the magistrate shall not acquit the accused. Second is, when the Magistrate considers that personal attendance of the complainant is not necessary on that day the Magistrate has the power to dispense with his attendance and proceed with the case. When the Court notices that the complainant is absent on a particular day the Court must consider whether personal attendance of the complainant is essential on that day for the progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the Court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the section. The discretion must, therefore, be exercised judicially and fairly without impairing the cause of ad ministration of criminal justice.
....."

6. If the parameters of the above dictum of law as held by the Honourable Apex Court is applied to the order passed by the trial Court, needless to mention that the order passed by the Court of District Munsif cum Judicial Magistrate, Vilathikulam is ex facie illegal and not sustainable in law.

7. The trial Court is cautioned against passing such orders hereafter and shall take sufficient care and caution prior to passing such slipshod orders, without any ground for passing such order under the provision of which the same has been passed or without assigning valid or tangible reasons in support of the order passed. Such attitude adopted on the part of the lower Court only gives way for this Court to cause interference into the same and hence, the following order.

In result,

i.the above Criminal Appeal succeeds and the same is allowed;

ii.the judgment dated 3.9.2002 rendered in C.C No. 85 of 1995 by the Court of District Munsif cum Judicial Magistrate, Vilathikulam, is set aside;

iii.the case is remanded to the trial Court for continuation of the trial procedure from where it has been left with on the complaint of the appellant in accordance with the procedures established by law, so as to deliver a judgment on merit and in accordance with law.

Index: Yes
Internet: Yes
To
1. The District Munsif cum Judicial Magistrate,Vilathikulam.

2. -do- thro' the
Chief Judicial Magistrate

3. The Public Prosecutor,
Madras.